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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1319

HOMER BROOKS,

Petitioner,

v.

REVEREND JOHN RENTON HUNTER, *ET AL.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Homer Brooks petitions for a writ of certiorari to review a judgment of the Court of Appeals for the District of Columbia Circuit, Per Curiam, affirming the judgments of the District Court entered on July 8, and July 29, 1966.

JUDGMENT BELOW

The Judgment of the Court of Appeals, dated February 16, 1967, has not been reported and is set forth in the Appendix, *infra.*

JURISDICTION

The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Where the local church (Bethel Pentecostal Tabernacle of the Assemblies of God, Inc.) had adopted by-laws for business purposes including modes of disciplinary action against officers and members, is it proper to arbitrarily remove them without first preferring charges, holding hearings, and notice of the meeting and a right to appear and defend, thereby violating their civil and ecclesiastical rights?

2. May the local church being affiliated with the District and General Councils of the Assemblies of God, the intermediate and parent bodies, refuse appeals to them on the theory that the local church is "sovereign" and/or that their Constitution and By-laws contain no provision or mode of appeal from members arbitrarily removed, when these members are almost the sole support financially?

3. Where the local church provides a "life-time" pension to the widow of the past Pastor and is adopted with the sole intention that it shall never be taken away by anyone, may the church take it away arbitrarily because the Pastor and others show malice toward her for no valid legal reason?

4. Where in testimony the family of the Pastor has made aggravated threats against the life of one of its Trustees, should not the Superior Religious Bodies remove the Pastor forthwith, and if they fail should not the courts, after hearing evidence, order his expulsion for misconduct?

5. Were the courts below in error in failing to review the case and render an opinion rather than enter a judg-

ment without first giving Petitioner an opportunity to amend the complaint, whether or not Petitioner violated Rule 8(a)(1)?

STATUTES, BY-LAWS AND REGULATIONS INVOLVED

The by-laws of the local church, Art. VIII, Secs. 2, 3, 4, Page 7, provide for regular quarterly and special business meetings (each must be approved by the Board of Trustees) and announced by the Pastor on two Sundays prior to the meetings:

> "Sec. 3. Quarterly Meetings. There shall be a quarterly business meeting of the assembly, announcement shall be made on two Sundays prior to the meeting. The time and place to be announced by the Pastor."
>
> "Sec. 4. Special business meetings of the assembly may be called when necessary, after proper notice has been given by the pastor or by the secretary of the assembly, provided the meeting has been agreed upon by a majority of the Board of Deacons. Special meetings may also be called by petition having been signed by not less than one fourth of the active membership of the assembly, the petition to be placed in the hands of the pastor or the secretary and announcement made on the two prior Sundays to the date of the meeting."

Sec. 5 provides that a quorum of not less than one fifth of the active membership be present.

Art. I, Sec. 2, Page 10 provides [for Board of Deacons (Trustees)]:

> "A majority present at any meeting of the Board of Deacons shall constitute a quorum, *provided* all members have been notified to be present. In the event the assembly is temporarily without a Pastor, or the Pastor is unable to be present, the Board of Deacons shall be empowered to provide for its own chairman from its membership in order to transact business for the assembly."

Art. II, Sec. 3 provides that Board of Deacons (Trustees) be chosen from the membership of the assembly — to be nominated annually by the nominating committee.

Art. II, Sec. 4, Page 11 (B) Other Officers:

> "(a) any office may be declared vacant by an act of a majority of the membership of the Board of Deacons at any regular or special business meeting.
>
> (b) Ground for such action shall be: (1) Unscriptual conduct. (2) Doctrinal departure from the tenets of faith. (3) Incompetency in office. (4) For any good and sufficient cause.
>
> (c) *Any incumbent under charges* shall have the opportunity for a fair and impartial hearing of his case before the assembly if he so desires."

Art. III, Sec. 3, Page 13 provides for discipline:

> "(a) Any member of the assembly who shall willfully absent himself from the regular services for a period of three consecutive months, or who shall be under charges, shall be temporarily suspended from active voting membership pending investigation and final decision in his case."

Sec. 4 provides mode of severing relationship:

> "Members in good standing, who may wish to sever their relationship with the assembly, or who may desire to be transferred to some other congregation, may apply to the secretary for a letter, which shall be granted on the approval of the Pastor and Board of Deacons, said letter to be signed by the Pastor and the Secretary of the Assembly."

By-laws and Rules of Superior Bodies

Art. XII of By-laws of Parent Body General Council of the Assemblies of God, of which membership is affiliated states:

> "Each local assembly has the right of self government under Jesus Christ, its living Head, and shall have the power to choose, or call its Pastor, elect its official Board, and transact all other business pertaining to its life as a local unit. It shall have

the right to administer discipline to its members *according to the Scriptures and its Bylaws.*" (Given in pertinent part.)

The Potomac District Council of the Assemblies of God, Inc., the intermediate Body of which membership is affiliated states:

Art. X, Sec. 3, Page 13:

"The District Council recognizes the sovereignty of the local assembly in accordance with Art. XI of the General Council Constitution. Affiliation with the District shall in no wise destroy this sovereignty." (Appears to be typographical error on Art. XI, should be XII.)

District of Columbia Code

"The Trustees or Directors shall hold office during the period stated in their certificates, and vancancies in the office of Trustees may be filled by election or appointment as above provided, and Rules and Regulations may be adopted in relation to its management of the estate and the duties of trustees or directors or for removal from office in *accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong,* not inconsistent with the Constitution of the United States and the laws in force in the District. (31 Stat. 1282, Act of March 3, 1901, ch 854, § 590, and 42 Stat. 665.)

Under Title 29, Sec. 506, Trustees are considered in office until term expires and other election.

Certificate of Incorporation

The certificate of incorporation of the local church (Bethel Pentecostal Tabernacle of the Assemblies of God, Inc.) dated March 4, 1935, and filed in the office of the Recorder of Deeds for D. C. as Instrument No. 23062, Liber 51, at Folio 444, on compliance with the laws of the District of Columbia, in part states:

"That we, the trustees hereinafter mentioned, were duly elected by said congregation of said church on the day and year first above mentioned according to the rules and practices governing the Assemblies of God denomination."

STATEMENT OF THE CASE

Petitioner is a citizen of the United States and has been a member of Bethel Pentecostal Tabernacle of the Assemblies of God, Inc. since about February 1943, and an officer (Trustee-Deacon) since March 1946. On or about October 29, 1963, he and his wife, and a number of other members, were sent letters of dismissal from the local church dated October 25, 1963, arbitrarily removing them from membership without charges, and without notice to appear and defend in violation of the by-laws, and in violation of the Fourteenth Amendment due process clause of "equal protection of the law," in essence violating their "civil" and "ecclesiastical" rights. (See R. 20, 21)

Petitioner brought an action for Declaratory Judgment in the District Court for the District of Columbia, for restoration to his church, damages for illegal removal, an order removing the Pastor for misconduct unbecoming a Minister, and other equitable orders. (R. 26, 34, 5) Petitioner filed 19 items of misconduct against the Pastor (Respondent John Renton Hunter) in the District Court (R. 10-20). Defendants ~~Appellees-Respondents 1, 2, 3, 4, 6, 7, 8, 9, 10~~, 11, 12, 13 and 14 were dismissed by Petitioner.

None of the Respondents (Defendants below in District Court) filed an answer. All were in default. Served on May 4th and 5th, 1966, default judgments were taken against One and Two, Rev. John Renton Hunter and Eugene W. Cuppett, respectively (subject to further proof) (R. 35). A motion and affidavit were filed for a default judgment against 3, 4, 6, 7, 8, 9 and 10. None of them obtained counsel until about May 27, 1966. No action was taken by Respondents until June 10, 1966. (R. 37, 38, 49) On July 8, 1966, the District Court denied mo-

tions for default against 3, 4, 6, 7, 8, 9 and 10. On July 29, 1966, order was entered by the Court dismissing the complaint as to 1, 2, 3, 4, 6, 7, 8, 9 and 10. Notice of Appeal was filed on August 3, 1966 to the Court of Appeals for the District of Columbia Circuit.

On February 16, 1967, the Court, Per Curiam, affirmed the judgments of the lower court without an opinion. (p. 13)

Petitioner and others received letters of dismissal from the church in October 1963 (R. 20, 21, copy of three letters, others not printed). Prior to court action immediate appeals were taken to the District and General Councils of the Assemblies of God. Both refused to accept the appeals and render a decision thereon based on facts (letters January, February 1964) and on or about February 4, 1964 a request for reconsideration was filed and Petitioner has never had a reply to this request.

REASONS FOR GRANTING THE WRIT

1. On April 15, 1958, the local church, Bethel Pentecostal Tabernacle of the Assemblies of God, adopted a constitution and by-laws with consent and in the presence of the Potomac District Council Officers which contained modes of membership and disciplinary action (Article III, supra p. __). Article II, page 11 of by-laws provides grounds for removal under Section 4 (b) (a), (b), (2), (3). No member is to be removed unless they are absent from regular services for a three-month period. Petitioner and others attended church on September 15, 1963 and letters of dismissal were sent dated October 25, 1963, less than three months. (R. 20, 21). The D. C. Code, Title 29, Section 504 provides that removal of Trustees be in accordance with Rules of Superior Bodies (R. 28), and their Rules require that removal or disciplinary action be in accordance with the Scriptures and their by-laws. Petitioner and others were not afforded the "equal protection of the law." No charges were ever sent and no notice to appear and defend.

2. Immediately upon receipt of the letters of dismissal in October 1963, they were appealed to the District and General Councils and they refused the appeals on the ground that they claimed the local church was sovereign, and their by-laws contained no provision of appeals from members removed. Many cases hold to the contrary (R. 29, 30, 31). In *Watson v. Jones,* 13 Wall. 679 (1872), and apparently not reversed, it is provided that:

> "No member can be forced out of church unless for neglect of his duties as a member. Letters of dismission are granted only upon request of members, and as a general rule the membership does not terminate until the letter has been used. The church could not terminate the membership of the minority against whom there were not charges, by voting them letters without their consent . . ."

In *Pelley v. Hill,* 299 Ky. 184, 184 S.W. 352, 355, it is held that the congregation being subject to superior jurisdiction of the church to which it belongs, officers cannot be removed by a majority of the congregation in violation of church Rules. (Citing 76 C.J.S. p. 773) In *Kidwell v. Crawford,* 298 Ky. 380, 182 S.W.2d 968, it was held that:

> ". . . Where only a minority was present at a meeting of the membership of a church under congregational form of government the effort of such minority to remove a Trustee by vote at such meeting was ineffective, at least where no notice had been given the Trustee. . . ."

76 C.J.S. p. 772 provides:

> ". . . The right to remove an officer of a religious society depends on the terms of the governing statute, charter, by laws, or custom . . . ".
>
> ". . . While the trustees or officers of a religious society are subject to removal for cause on compliance with the rules and procedure governing removal of an officer cannot be removed on grounds other than those provided by the rules and discipline of the church. Generally speaking, before an officer of a religious society may be removed, specific charges must be filed, adequate notice given and full

opportunity for a hearing. . . . [and] In a congregational type church - to which it belongs, officers cannot be removed by a majority of the congregation. . . ."

". . . Cannot be removed in violation of rule of discipline adopted.

The local church has a rule which it must abide by.

3. The church, on motion by the Board and affirmed by the congregation granted Mrs. Mary Schaeffer (age 78), widow of the former Pastor, a "lifetime" pension of $75.00 per month. It was removed without valid legal reasons and should be restored. The church owes her now about $3,100.00. The feelings are that once this was granted it should not be taken away for frivolous reasons. (R. 21, 33). Railroad Retirement and other retirements set up by numerous companies are not allowed to remove these pensions arbitrarily, each member or worker having a legal right of those benefits.

4. In a business meeting of the local church on September 16, 1963, testimony showed that the Pastor, Respondent One, and family had made aggravated threats on the life of Petitioner, a Trustee, to remove him from the church — "even if by death." (R. 25) One of the Trustees testified that the Pastor called official Trustee Board meetings after church without all being notified (R. 25). He also made disparaging remarks in public concerning Trustees (R. 13). This is one of the issues the court should consider reviewing because of his misconduct.

5. Petitioner is of the opinion that the courts below should have rendered an opinion rather than enter judgment or a "statement of facts and conclusions of law." The case should not have been dismissed. At least Petitioner had some rights under the complaint, and being so, the complaint should not have been dismissed. Respondents could have moved to strike any part of the complaint they may have thought not necessary. The two defaults against One and Two should have been sustained and it is

believed the District Court was without discretion to set aside the defaults and dismiss the complaint, and that the Court of Appeals should have reversed the judgments of the lower District Court.

In Barron & Holtzoff 1A, at page 300, para. 348 states:

> ". . . thus the fact that the Plaintiff may not be entitled to all the relief sought does not warrant dismissal of the action . . ." (See Refoule v. Ellis, 74 F. Supp. 336 (D.C. Ga. 1947)

Petitioner believes that the right of a citizen may be more important than a claim of Respondents that he violated Rule 8(a)(1). All Respondents were in default out of court and finally came into court about 36 days after being served with a summons and complaint. Petitioner believes the District Court was without discretion to set aside the defaults against One and Two, and that was an abuse of discretion in denying default judgments against seven others legally served. The Court of Appeals, it is believed by Petitioner, should have sustained Petitioner's rights for a reversal. Petitioner believes that if the Court grants the writ herein and the matter is eventually heard on appeal and argument on his brief, he may convince the Court of his rights for a reversal.

The questions raised herein are of national importance Like questions continually recur all over the country in local churches and various Religious Bodies concerning the safeguarding of civil and ecclesiastical rights of members, officers and ministers. It is believed that the case of *Watson v. Jones, supra,* should be enlarged upon.

In the District Court, Respondents submitted the claim that the complaint should be dismissed because Petitioner violated Rule 8(a)(1) Fed. R. Civ. P. (R. 38). Petitioner disputed this in that ten pages of the complaint contained items of misconduct (items 1-19, R. 10-20) of the Pastor (Respondent One, Rev. John Renton Hunter). The District Court apparently dismissed on their claim, but in their Brief in the Court of Appeals (Argument I, page 4) they claim:

"For good cause shown the Court may set aside an entry of default: '. . . That good cause being Appellant's failure to live up to his agreement to grant the Appellees an extention of time to file a responsive pleading . . . '."

DEPARTURE: This claim is a complete departure from their first claim — thereby abandoning the first claim that the Court should dismiss on the basis of violating Rule 8, and the court below should have thrown out their claim of violating Rule 8(a)(1) and sustained the claims of Petitioner and reversed the District Court. In some Southern States in rules of practice, when there is a "departure" from the first pleading, the first claim is suspended and the latter claim takes its place. Petitioner called this to the attention of the Court of Appeals on argument. Petitioner feels here that there would be no question of violating Rule 8(a)(1). Respondents failed to comply with the "excusable neglect" rule under Rule 6(b)(2).

CONCLUSION

In the case of *Le Duc v. Normal Park Presbyterian Church,* 142 F.2d 105, 323 U.S. 729, 65 S. Ct. 65, 89 L. Ed. 585, certiorari was denied by this Court but it indicated that if Petitioner's civil rights had been violated the Court would have granted the writ. In the present case Petitioner's civil and ecclesiastical rights were violated by the Pastor and local church and the Superior Bodies having jurisdiction refused to allow and consider the appeals of October 30, 1963.

In *Massey v. City Council of City of Des Moines,* No. 47188, 31 N.W.2d 875, certiorari was the proper remedy to review acts of the City Council.

Under questions presented herein Petitioner is unable to find an exact precedent by this Court. Petitioner believes the Court should allow the writ and review the entire case with respect to rights, privileges, and duties of

local church members, officers, and rights of appeal to the higher Bodies of affiliation.

Petitioner prays that the Court grant the certiorari and the judgment below should be reviewed.

Respectfully submitted,

Homer Brooks, *Pro Se*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition was served on Mr. F. Joseph Donohue, and Mr. Theodore Kligman, Attorneys for Respondents, by mail postage prepaid at their office 503 D Street, N. W. (Court Square), Washington, D. C. 20001, this 25 day of April, 1967.

Homer Brooks

APPENDIX

[Filed February 16, 1967]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,445 September Term, 1966

Homer Brooks, Civil 1158-66

Appellant

v.

Reverend John Renton Hunter, et al.,

Appellees

Appeal from the United States District Court for the District of Columbia.

Before: Prettyman, Senior Circuit Judge, and Burger and McGowan, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgments — of the District Court appealed from in this cause be, and they are hereby, affirmed.

It is further ORDERED by the Court that appellees herein recover from appellant their taxable costs on this appeal, and have execution therefor.

Per Curiam

Dated: FEB 16 1967